REPORT

TO

THE

PRESIDENT

BY

EMERGENCY BOARD

NO. 188

APPOINTED BY EXECUTIVE ORDER 12085, DATED SEPTEMBER 28, 1978, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between the Norfolk and Western Railway Company and certain of its employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.

(National Mediation Board Case No. A-10154)

WASHINGTON, D.C.

December 15, 1978

LETTER OF TRANSMITTAL

Washington, D.C.
December 15, 1978

The President
The White House
Washington, D.C.

Dear Mr. President:

Emergency Board Number 188, created by you on September 28, 1978 by Executive Order 12085 pursuant to Section 10 of the Railway Labor Act as amended, has the honor to submit its report herewith.

The Board, composed of the undersigned, was appointed to investigate a dispute between the Norfolk and Western Railway Company and certain of its employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. In fulfillment of its obligation the Board held hearings and considered the evidence and arguments presented by the parties. Our report and recommendations are based upon this investigation of the issues in dispute.

Respectfully,

Paul D. Hanlon
Chairman

Jacob Seidenberg
Member

Jarre S. Williams
Member

I. HISTORY OF THE EMERGENCY BOARD

Emergency Board No. 188 was created by President Carter on September 28, 1978 by Executive Order 12085 pursuant to Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160). The Board was formed to investigate a dispute between the Norfolk and Western Railway Company (N&W) and certain of its employees represented by the Brotherhood of Railway and Airline Clerks (BRAC). The President appointed as Chairman of the Board Paul D. Hanlon of Portland, Oregon. Selected as Members of the Board were Jacob Seidenberg of Falls Church, Virginia and Jerre S. Williams of Austin, Texas. All had extensive experience as third party neutrals in the railroad industry and had served on Presidential Emergency Boards on previous occasions.

The Board convened in Washington, D.C. on October 2, 1978 to conduct a procedural meeting with the parties. Ex parte hearings were held in Washington on October 3 with the Carrier and on October 5 with the Brotherhood. Thereafter, the parties exchanged exhibits submitted to the Board and transcripts of the ex parte proceedings. A joint hearing was conducted on October 16 at which time both parties made their rebuttal statements to the Board. During the course of their appearances, the parties agreed to an extension of the submittal date of the Board's report to on or before December 15, 1978, which was subsequently approved by the President.

The parties were given full opportunity to present evidence and argument before the Board and did so in a cooperative manner throughout the proceedings. The Board expresses its gratitude to both groups for facilitating the expeditious conduct of the hearings and presenting their positions in a manner beneficial to the Board in the formulation of its recommendations.

II. BACKGROUND TO THE DISPUTE

The Norfolk and Western Railway is the Nation's seventh largest railroad, operating some 7,600 miles of track in 15 states. Heavily concentrated in Virginia, West Virginia, Ohio, Indiana, and Illinois, the Carrier is an important hauler of coal, transportation equipment and agricultural products. The Brotherhood of Railway and Airline Clerks represents some 4,000 employees on the property. These employees are engaged in the work of office clerks, yard clerks, freight handlers, warehousemen, janitors, agents, telegraphers, watchmen and other related classifications.

The dispute which led to the appointment of this Board originated on October 27, 1976 when the Brotherhood served the Norfolk and Western with a notice of its desire to alter its current scope rule, pursuant to Section 6 of the Railway Labor Act. A second Section 6 notice was subsequently issued by BRAC on October 12, 1977 dealing with employee protection and other work rules. The Brotherhood invoked the services of the National Mediation Board (NMB) with respect to the 1976 notice on October 4, 1977. The case was docketed as NMB Case No. A-10154, and joint mediation sessions were held with the parties on various dates between November 1977 and April 1978. On May 31, 1978 the NMB proffered arbitration to the parties which was subsequently refused by the Brotherhood. The NMB terminated its services on June 7, 1978 leaving the parties free to resort to self-help on July 8.

The negotiating sessions on the property and in mediation were largely concerned with legal objections which the Carrier raised with respect to the 1976 notice. After the Brotherhood initiated a strike on July 10, 1978, however, the U.S. District Court for the Northern District of Illinois ruled on July 20 that the notice was lawful and denied the Carrier's motion for an injunction against the work stoppage (Norfolk & Western Railway Company v. Brotherhood of Railway and Airline Clerks, No. 78-C-2577). Thereafter direct negotiations between the parties resumed on July 22 and continued on various dates through September 22.

Shortly after the initiation of the work stoppage, BRAC began to picket carriers not involved in the dispute at points where they interchanged traffic with the N&W. Later, when it was revealed that the N&W was receiving strike indemnity payments under an insurance program in which more than 70 other carriers were participants, BRAC threatened to strike all carriers party to the program. The carriers sought injunctive relief from the U.S. District Court for the District of Columbia, and while they initially gained a temporary restraining order, they were denied an injunction on September 12, 1978 (Alton & Southern Railway Co. v. Brotherhood of Railway and Airline Clerks, No. 78-1607). The U.S. Court of Appeals for the District of Columbia affirmed the lower Court's decision on September 14 whereupon the carriers appealed to the U.S. Supreme Court. Chief Justice Warren Burger stayed the lower Courts' actions until September 25 when the stay was lifted without a decision on the carriers' Petition for Writ of Certiorari.

BRAC soon began to extend the strike to the other carriers participating in the strike indemnity program until by September 26 the stoppage involved nearly two-thirds of all U.S. rail traffic and was threatening serious national consequences. On September 27 Secretary of Labor Ray Marshall announced that he had arranged for BRAC and the N&W to resume negotiations at the Department of Labor, and the parties embarked upon a 26-hour period of intensive mediation provided by James J. Reynolds, a former Under Secretary of Labor and the recently retired President of the American Institute of Merchant Shipping. The mediation effort did not result in an agreement, however, and the following day the National Mediation Board notified the President that in its judgement the dispute threatened to substantially interrupt interstate commerce to a degree as to deprive the country of essential transportation service. The President, thereupon, created this Emergency Board on September 28, 1978 pursuant to Section 10 of the Railway Labor Act.

The principal issues in the dispute are those pertaining to the scope of the present agreement, the conversion of certain excepted or partially excepted positions to full or partial coverage under the agreement and job protection. Substantial progress was made by the parties in their direct negotiations. Tentative agreement was reached on most of the language changes involved in the scope issue, and the parties agreed in principle that a certain number of positions were bargainable and might be placed under the basic union contract. Issues involved in the conversion to partial or full coverage, such as possible incumbency features of the conversion, the applicability of certain rules to the converted positions, and the right of the carrier to create excepted positions in the future, remain in dispute, however. The parties also agreed to consider some form of job protection as a substitute for the Brotherhood's demand that an implementing agreement be required in the event of work modifications resulting from technological, organizational or operational change. For this reason, portions of BRAC's October 12, 1977 Section 6 notice concerning job protection came under discussion in the context of this dispute, and the principle of five years of protection was agreed to in the event of most permanent abolishments of positions. Issues relating to the eligibility requirements for protection, protection of extra board and coal pier employees, relocation requirements for the preservation of protected benefits and recall obligations remain in dispute, however.

On September 21, 1978 the Carrier submitted to the Brotherhood a complete proposed settlement package encompassing all matters pending in the negotiations. This proposed package was used as the basis for the round-the-clock mediation effort at the Department of Labor on September 27 and 28, and several revisions and additions were made at that time. The September 21 proposal as amended is reprinted in the Appendix, Exhibits 1, 2, and 3, except that Articles XIII and XVI of Exhibit 2 and Exhibit 3 are Organization proposals.

References to specific sections in the remainder of this Report will be to Exhibit 1, the proposed revision of Supplemental Agreement "A" of April 1, 1973, and Exhibit 2, the proposed Memorandum Agreement on Protection.

III. THE SCOPE RULE (Appendix, Exhibit 1, Rule 1(c))

Rule 1(c) of the 1973 Agreement between the parties reads as follows:

> "The positions listed in Addendum Number 1, are not within the scope of this Agreement."

BRAC seeks an amendment to that language. It's latest proposal was to change the language to read as follows:

> "The positions listed in Addendum Number 1, are excepted from the application of these Rules."

The Carrier's latest proposal reads as follows:

> "Those of the positions listed in Addendum Number 1 which are or are later determined to be within the clerical class or craft are excluded from the application of this Agreement."

Addendum Number 1 is a list of positions with titles such as "Agent" and "Agent-Yardmaster." BRAC accepts the fact that these positions are not covered by the Rules but seeks language which would indicate that those jobs are nevertheless within the clerical class or craft. BRAC is frank in stating that it's goal is to in effect build a fence around these positions so that the incumbents cannot be organized by any other union.

It is the position of the Carrier that some of the positions listed in Addendum Number 1 may be, at least arguably, outside the class or craft represented by BRAC, and that since jurisdictional

disputes might arise in that connection, it would be "inappropriate" for the Carrier to enter into the contractual commitment sought by BRAC in its proposal. The Carrier further argues that in its proposal on this issue it is merely taking a neutral position and indicating that it is willing to honor craft or class lines established by the government agency which has jurisdiction in the matter.

The Board finds it difficult to understand why BRAC places such importance on this issue. Regardless of what contract language may be negotiated between these two parties, it would not be binding upon other organizations which might subsequently claim jurisdiction over these positions, and the appropriate craft or class lines would have to be determined by the proper government agency.

Since it is legally impossible for BRAC to build the fence which it seeks, we feel that the language proposed by the Carrier is a reasonable compromise on this issue, and we recommend that it be adopted by the parties.

IV. CONVERSION OF JOBS

A. JOB RIGHTS OF INCUMBENTS (Appendix, Exhibit 1, Section 3(b))

The parties have agreed that approximately 40 positions presently treated as officer or supervisory positions and listed in Attachment A are to be converted to full bid-and-bump status. BRAC insists that these positions be immediately converted to full bid-and-bump status on the effective date of the Agreement, although conceding that the right of a senior employee to bid-and-bump into one of these jobs would only accrue in the event of his job being abolished or his being displaced.

The Carrier takes the position that these positions should be converted to full bid-and-bump status only when the present incumbents vacate such positions, if the positions are then continued by the Carrier.

In support of its contention that preferential rights should be afforded the incumbents of these positions, the Carrier argues that these employees accepted their jobs on the understanding that they were in the officer and supervisor category, and the Carrier now feels an obligation to protect them from loss of those jobs. The Carrier also asserts that the present incumbents enjoy certain fringe benefits which would not be payable to rank and file positions.

In response to the Carrier's proposal, BRAC points to the fact that many of these incumbents are relatively young, and that accordingly if full preferential rights should be granted to them, the conversion of the positions to full bid-and-bump status might not occur for 30 years.

The Board finds some merit in the arguments on both sides of this question. The present incumbents, who accepted these positions with the understanding that they were in the officer and supervisor category, do deserve some consideration and should be afforded some period of stability. On the other hand, since the parties have agreed that the nature of the duties involved is such that the jobs are no longer entitled to excepted or partially excepted status, it would be illogical and inequitable to withhold these job opportunities indefinitely from displaced senior employees.

The Board recommends that the present incumbents of the positions listed in Attachment A be protected against displacement from those positions for a period of two years from the effective date of the new Agreement. At the end of that two year period, the incumbents would be subject to being bumped by a senior employee only if and when the senior employee's job was abolished or he was displaced.

B. PAY ADJUSTMENTS (Appendix, Exhibit 1, Section 3(b))

In connection with the approximately 40 jobs listed in Attachment A, which are to be converted to bid-and-bump status, the Carrier requests that the following sentence be included in Section 3(b):

> "Any position shown on Attachment A, permanently vacated for any reason, will be treated as a new position and the rate of pay will be adjusted in accordance with Rule 50(a) of the April 1973 Master Agreement."

Rule 50(a) of the April 1, 1973 Master Agreement reads as follows:

> "The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

It is the position of the Carrier that once the positions listed in Attachment A are converted to bid-and-bump status they will become new positions and the rate of pay should be subject to adjustment upward or downward under Rule 50(a). BRAC insists that no reduction in the rates of pay can be permitted.

In support of this proposal Carrier witnesses expressed some vague apprehension that once these jobs are converted to bid-and-bump status, an employee bidding into a vacancy would not have as much interest in the position as the prior incumbent had and might not perform all of the functions of the position as originally designed.

The Board can find no merit in the Carrier's position on this issue. The conversion of these jobs from excepted to bid-and-bump status does not make them "new positions" within the meaning and intent of Rule 50(a). It also seems clear that it lies fully within the power of the Carrier to insist upon competent job performance and to continue all of the functions of the position just as they existed prior to the conversion. Under these circumstances no reduction in the pay rates would be proper, and the Board recommends that the Carrier withdraw this proposal.

C. PARTIALLY EXCEPTED POSITIONS

1. *Consolidation (Appendix, Exhibit 1, Sections 4, 5, & 6)*

The positions discussed above are essentially fully excepted positions. In addition, there are a number of partially excepted positions which the Carrier and the Organization have dealt with in their bargaining.

Involved are approximately 611 positions which are now covered by Sections 4(b), 5, and 6 of Supplemental Agreement "A," of April 1, 1973. The Carrier has agreed to convert 400 of these positions to full coverage under the Master Agreement without any Rule exceptions. The disposition of the remaining 211 positions is in dispute.

In brief summary, the nature of the exception of these positions is that employees in the positions under 4(b) of Supplemental Agreement "A" are covered only by the union shop requirement, and they are entitled to certain management fringes. Employees in Section 5 positions are in the same situation as Section 4(b) employees except that instead of having management fringes, they are covered by certain fringe benefits under the rules of the Master Agreement. Employees in Section 6 positions are covered by certain additional rules, but the parties agreed that the major additional rule coverage has to do with the rules governing overtime.

With respect to these 211 positions still remaining in Sections 4(b), 5, and 6 after the 400 are converted to full Master Agreement coverage, it is the Carrier position that the three classifications

should be retained. Section 4(b) is applicable only to incumbents, and such positions would become Section 5 positions when new appointees are put in them. Sections 5 and 6 positions would remain separate. The Organization takes the position that the separate classifications of positions contained in Sections 4(b), 5, and 6 should be abolished. The Organization urges that all of the 211 employees should be covered by the rules of the Master Agreement except those having to do with bid-and-bump.

The parties agreed that the major difference between them was the application of the overtime rules to all the 211 employees. The Carrier wishes to retain classifications 4(b) and 5 to withdraw those positions from the overtime requirements of the Master Agreement.

The starting point for the analysis of this disputed issue is a reminder that all of the 211 employees involved are within the scope of the Master Agreement and are, therefore, entitled to and subject to representation in collective bargaining by BRAC. All of these positions are subject to the Union Shop requirement, and there is no dispute about their being positions properly covered by the Scope Agreement. These positions are truly, therefore, exceptions to what must be recognized as the normal and usual bargaining relationship between the Organization and the Carrier.

The importance of recognizing that this is exceptional treatment of positions normally covered by all aspects of the Master Agreement is emphasized by the report of Emergency Board No. 186, May 23, 1975, which involved BRAC and the National Railway Labor Conference, of which Carrier is a member. One of the issues before that Emergency Board was the Scope Rule involving employees represented by BRAC. In its report, the Emergency Board found that of about 93,000 positions covered by BRAC agreements with the Class I carriers, around 10,500 positions were partially excepted and close to 5,000 were fully excepted. Thus, approximately one-sixth of all the positions covered by BRAC Scope Agreements were either fully or partially excepted from the application of those agreements.

Emergency Board No. 186 concluded that "faster progress should be made toward eliminating fully excepted or partially excepted positions in the Scope Rules which properly come within the coverage of the crafts and classes which BRAC represents." Board No. 186 recommended a national goal to convert ten percent of the fully or partially excepted positions to covered status within ninety days after signing the agreement. The Board went on to say: "[T]he Board urges

the parties to move toward the conversion of all excepted positions which truly should be covered within the various collective bargaining agreements by January 1, 1978."

In following up upon this recommendation by Emergency Board No. 186, Mr. William H. Dempsey, Chairman of the National Railway Labor Conference, wrote the President of BRAC on July 23, 1975, confirming that the National Railway Labor Conference was undertaking to insure that the recommendations of the Emergency Board be carried out.

The Carrier has not shown a serious reason why these 211 employees which are to remain partially excepted should be kept free of the application of the overtime rules. There is no evidence that these employees are unusual in exposure to large amounts of overtime and widely fluctuating work periods. The Organization accepts the right of the Carrier to select these employees and to promote them without bid.

The Board recommends that the 211 positions now contained in Sections 4(b), 5, and 6 of Supplemental Agreement "A" be combined into one group of partially excepted positions which are covered by all of the rules of the Master Agreement except 5, 12, 17(c), 43, and 45. To take care of business fluctuations, the Board confirms that the Carrier should be allowed to reinstate discontinued positions in this single category within twelve months of discontinuance.

2. *Creation of New Positions (Appendix, Exhibit 1, Section 9(b))*

In Section 9(b) of Exhibit 1, Carrier asks that it be authorized to establish a total of ten partially excepted positions a year, beginning with the year 1979, without the approval of the Organization. BRAC strongly opposes this proposal on the ground that it is moving in the opposite direction from eliminating excepted and partially excepted positions and that such positions should be created only with the Organization's approval.

As a generalization, BRAC's position may appear persuasive. The Board has recommended substantial limitation upon partially excepted status for certain positions. Now it is considering authorizing the Carrier to create new partially excepted positions without Organization approval.

There is practical justification, however, for Carrier's proposal. Carrier has already agreed to eliminate a substantial number of excepted and partially excepted positions. In addition, under the Board's recommendation, the Section 4(b) and Section 5 positions would be eliminated. It follows that if Carrier accepts the recommendation concerning the elimination of Sections 4(b) and 5 posi-

tions, the partially excepted positions which Carrier would be able to create under this proposal would be covered by the agreement except for the Carrier's right to select and promote persons occupying such positions.

The Carrier feels that it needs the protection of the right to establish such positions without the veto of the Organization. Under the changes that are being made and the fluctuations of the business, the Carrier urges at least some flexibility with respect to partially excepted positions.

The Board is of the view that an unlimited right to establish ten positions a year is capable of undermining the fundamental principle that excepted and partially excepted positions are a departure from the normal situation. But the Board does not feel that there would be a substantial intrusion upon the Scope Agreement, in view of the broadened coverage of partially excepted positions recommended above, provided Carrier is limited to ten such positions a year for a total of three years only, and provided Carrier is required to consult with the Organization in advance of the establishment of each such position. The Organization would not, however, have a veto power over the establishment of such positions. The Board feels that with these major limitations the competing viewpoints of Carrier and Organization are reasonably reconciled.

The Board recommends that under Section 9(b) of Exhibit 1, Carrier be authorized to establish a total of ten partially excepted positions, as restrictively defined in this report, beginning with the year 1979 and up to an upper limit of thirty within three years. Further, the Board recommends that the Carrier be required to consult with the Organization in advance of the establishment of each position, although the Organization should not have the power to disapprove of such establishment.

D. SENIORITY DATE FOR EXCEPTED POSITIONS (Appendix, Exhibit 1, Section 11)

Carrier has proposed that Section 11 of the revised Supplemental Agreement "A" contain a provision that the seniority date for the employees holding "Section 3" positions (the excepted positions) shall be the later of date of hire in the position or April 1, 1973. Organization proposes that the seniority date be the date of last hire by the Carrier.

No persuasive reason was established at the hearings why April 1, 1973, the date of the signing of Supplemental Agreement "A", should be a cutoff date for seniority purposes. Under this new agreement, employees in exempt positions are to continue to accumulate seniority. They should

be entitled to their seniority just as other employees are. In the other major phase of this dispute, the Protection Agreement, the date of the beginning of the employment relationship in the clerical class or craft is to be considered to be the controlling date.

The Board recommends that in creating seniority for those employees who have not been accumulating seniority and now will be accumulating seniority in the excepted positions, the date of inception of the employment relationship in the clerical class or craft shall be the date to establish seniority.

V. THE PROTECTIVE AGREEMENT

A. ELIGIBILITY REQUIREMENTS (Appendix, Exhibit 2, Article IV)

The parties have agreed in principle to a five-year "protective period", but there is basic disagreement as to the length of service to be required for an employee to qualify for such protection. It is the position of the Carrier that present employees and new hires would become qualified for protection only after accumulating five years of clerical seniority with this Carrier. BRAC proposes immediate protection for all employees in active service; that new hires would qualify for protection after accumulating three years of employment relationship with the Carrier; and that employees on furlough with less than 3 years of employment relationship as of the date of the Agreement would qualify for protection only after accumulating three years of employment relationship and upon being recalled.

The Carrier estimates that its proposal would afford protection to approximately 90% of the clerical work force. It contends that as a matter of economics it must have the flexibility to lay off the remaining 10% without monetary obligation if necessary in order to reduce fixed expenses in times of adverse business conditions.

BRAC contends that the five-year qualifying period sought by the Carrier is excessively lengthy, and in support of this position has submitted numerous agreements with other carriers as exhibits.

In seeking a solution to this important issue, the Board has made a careful analysis of the BRAC agreements with other carriers which were submitted in evidence and referred to by the parties. It may be noted that in making this analysis the Board essentially concurs with the position

taken by the Carrier that there are logical reasons for distinguishing merger-related protective agreements of the type with which we are here involved.

The service requirements of these other agreements range from immediate protection up to five years for employees in active service. The most prevalent standard, however, appears to be three years of service. The Board believes that a three year qualifying requirement would be a reasonable compromise in the present case which would provide protection immediately to a large percentage of the clerical work force while still affording the Carrier enough flexibility to meet its needs during depressed business periods. The Board recommends that the parties reach agreement on a qualifying period of three or more years of employment relationship in the clerical craft or class with this Carrier for both present employees and new hires.

B. SENIORITY-EMPLOYMENT RELATIONSHIP (Appendix, Exhibit 2, Article IV)

The Carrier urges that the criterion for eligibility for a protective allowance be "seniority" in any current seniority district as this term is defined in the Master Agreement. On the other hand, the Organization urges that "employment relationship" be the basis for qualifying for the aforesaid allowance.

The Carrier also states that the employee to be eligible for protective benefits should not only have the requisite seniority in the seniority district, but should also have it in the clerical class or craft. It wants to prevent the situation where, for example, an engine or train service employee with four and a half years of service, transfers to a clerk position, and after working this position for six months, could maintain that he has a five year "employment relationship" with the Carrier and is, therefore, eligible for a protective allowance. The Carrier contends that the most current effective date in the clerical class or craft should determine eligibility for a protective allowance. The Carrier notes that many agreements already use seniority to determine eligibility for protection and this should be the standard.

The Carrier also takes issue with the Organization's contention that its seniority rules are "peculiar" and notes that these allegedly "peculiar" rules were jointly negotiated with the Organization.

The Organization, on the other hand, stresses that protective agreements in the Industry are based on "employment relationship" rather than "seniority." It added that those agreements which the Carrier cites as using "seniority" or a seniority date, are agreements where the seniority date is within a class or craft rather than a seniority district. The Organization asserts, because of the Carrier's peculiar seniority rules, it is possible for an employee within a class or craft to have years of service in a seniority district but still not have enough seniority in a district in which he was working to qualify for protection. The Organization states that the "employment relationship" concept is the most appropriate and should be utilized to bring employees under the umbrella of protection.

The Board recommends that the parties accept "employment relationship" rather than "seniority" to be the concept utilized because the record indicates that "employment relationship" is the prevailing standard used in protective agreements in this industry. The Board further recommends that the "employment relationship" standard be limited to include "employment relationship within the class or craft" because such a concept would be responsive to the Carrier's valid concern.

C. EXTRA BOARDS (Appendix, Exhibit 2, Article II, Section 1(f))

The Carrier seeks to exclude from the definition of "permanent abolishment of a position" the reduction of employees from its guaranteed extra board. The Carrier presently has the unilateral right to establish such extra boards and utilizes them to provide relief for positions which are vacant because of illness, general absences, vacations and temporary fluctuations in service requirements of less than 30 days. The Carrier contends it needs the flexibility provided by these extra boards and that it should be permitted to have the right to adjust the number of extra board employees without affording them the benefits of the protection agreement.

The Organization, on the other hand, contends that extra board employees on this property are regularly assigned and subject to all rules of the Agreement and therefore should not be precluded from enjoying protection benefits. It fears that the Carrier will utilize its unilateral right to create extra board positions to avoid paying protection benefits. New positions could be created on the extra board, periodically abolished and later re-established. Protection, consequently, would never flow to what in fact should be regularly assigned positions. BRAC suggests, therefore, that new extra board positions be created only with the approval of the local General Chairman who

would be sympathetic toward the Carrier's need to establish temporary, unprotected extra board positions to accommodate vacation requirements and unusual operating exigencies.

The Carrier counters that it has no intention of using extra board employees in lieu of establishing permanent positions. Moreover, it states that it is precluded from doing so by the relevant rules of the Master Agreement. The Carrier also objects to the fact that BRAC's proposal would freeze the present size of the extra boards for protection purposes at a time when they have been inflated to accommodate summer vacation schedules. In addition it fears the veto power of the General Chairman in whose interest it might be to force the Carrier to perform extra work through the use of overtime. The Carrier offers, however, to alleviate the Organization's concern by agreeing that the number of extra board positions could not exceed 30 percent of the regular and regular relief positions covered by the particular extra board.

The Board finds some merit in the position of both parties. It recognizes the Carrier's need to be flexible in adjusting the personnel of the extra boards to cope with the exigencies of service, and it also recognizes how disadvantageous it would be to have an appreciable number of employees, some of whom had been employed for a number of years, ineligible for protection. The Board also cannot be unmindful of the possibility of the extra board being used to augment forces to the detriment of regular employees who might otherwise be bidding for posted regular positions.

The Board, therefore, recommends that, while the Carrier still retains the overall authority to adjust the number of extra board positions required, it should not be an unlimited and unrestricted right. Accordingly, it further recommends that the number of positions that the Carrier may have on its extra boards in each territory be limited to fifteen (15) per cent of the regular and regular relief positions protected by the extra board.

The Board further recommends that, in the event the Carrier is confronted with unusual and extraordinary circumstances warranting a need to adjust the number of extra board positions in excess of the 15% limitation, that it should reach an agreement with the General Chairman as to the appropriate larger number. The Board is confident that the General Chairman will respond in a constructive and affirmative manner to any meaningful service problem encountered by the Carrier.

D. COAL PIERS (Appendix, Exhibit 2, Article II, Section 1(h))

The Carrier proposes that it have the latitude to exclude from protective benefits approximately 53 positions at its Norfolk Coal Pier. It stated that about 40% of its business is coal carriage, and from time to time it must temporarily discontinue or abolish positions at the Coal Pier because of fluctuations in coal dumpings due to the unavailability of ships to transport the coal. This is a matter over which it has no control. The Carrier states there are periods ranging from two days to possibly two or three weeks when there is little or no work for these employees, and this is why it wants the temporary fluctuation in work opportunities not to trigger the contractual protective benefits.

The Carrier contends that the test period formula proposed by the Organization is unrealistic. It states the coal pier jobs are among the highest rated positions in the seniority district and therefore are held by the most senior employees. If these jobs are abolished, the incumbents will displace junior lower paid employees, who would then be eligible for displacement or furlough allowances and other protective benefits. The Carrier adds that after a few fluctuations in the coal dumping operations, it is likely that practically all of the 250-300 employees in the seniority district would be protected if the fluctuations resulted in job abolishments. The Carrier further states that it is also possible for a coal pier employee's furlough allowance to exceed the normal rate of his job, because overtime earnings will be included in the test period. The Carrier adds that the Organization's test period formula amounts to a job freeze since the protection cost resulting from the coal dumping fluctuations will be prohibitive.

The Organization insists that it cannot bargain for protective benefits for the entire bargaining unit and exclude these 53 employees. It states that it recognizes the peculiarities of coal pier employment, and it is willing to offer the Carrier a test period earnings formula to enable the Carrier to establish a monthly guaranteed rate for these employees. The Organization states it has many agreements with carriers covering ore and coal pier operations which provide protection for such employees on a test period basis.

The Organization adds that the Carrier cannot abolish these coal pier jobs to the extent it represented. While it is true there are variations in the availability of the vessels, the Master

Agreement does not allow for realignment on a daily or weekly basis. The Carrier is contractually obligated to give the affected employee five working days' notice of the position abolishment, and the employee furloughed as a result thereof, has ten calendar days to return to service after being notified. The Organization stressed that the Carrier cannot abolish and reestablish the coal pier jobs with the rapidity described and still accommodate the operation.

The Board finds that since the Carrier has generally accepted the concept of protection for the class or craft of its employees represented by the Organization, it would be inappropriate to single out for protection exclusion the approximately 53 coal pier employees, but in light of the vagaries of the coal pier operation, the overall criteria for protection eligibility does not appear to be applicable.

The Board, therefore, recommends that a test earning formula be established, based on total straight time earnings over a representative 12-month span, which would not reflect either abnormal high or low earnings, and when divided by twelve should result in an appropriate monthly guaranteed rate against which a protective allowance could be measured.

E. PROTECTION FOR FURLOUGHED EMPLOYEES (Appendix, Exhibit 2, Article IV, Sections 3 & 4)

At the time the Memorandum Agreement on Protection goes into effect, there will be a substantial number of employees on furlough who with adequate seniority have qualified for protection. The Carrier proposes that protection as to these furloughed employees begin when they are recalled. The Organization insists that protection begin automatically at once for all furloughed employees with three years of employement relationship.

The broad-based protection which the parties have already agreed to, subject to disagreement concerning the eligibility requirements, will immediately create the potential for financial liabilities on the part of the Carrier. It certainly would result in immediate and heavy actual financial liabilities if the Carrier had to begin paying protection at once to employees already on furlough.

There are practical differences between furloughing an employee when no protection is to be paid. Another major carrier told Carrier representatives that it had never paid protection under its protection agreement which has been in existence for several years. All carriers having broad-based

protection can be expected to make every proper and reasonable effort to avoid paying wages to persons not working. Those considerations and factors were not of critical importance to this Carrier when the employees, now to be eligible for protection but who are on furlough, were placed on the furlough status. The Carrier can properly claim that it will take time to work them back into employment with the Carrier, at which time protection will become applicable.

The rules concerning recall are fixed under the seniority provisions. The Carrier's assertion that ultimately all of these eligible furloughed employees will be recalled was not disputed by BRAC.

The Board is in basic agreement with the Carrier's contentions. A survey of protection agreements on other carriers shows that the overwhelming majority of them follow the Carrier's proposal that protection not begin until furloughed eligible employees are recalled.

The Board recommends that Article IV (3 and 4) of Exhibit 2 be accepted by the Organization. Employees on furlough who meet the eligibility requirements for protection at the time of the signing of the agreement, and employees who achieve the eligibility requirements for protection while on furlough after the signing of the agreement should be entitled to protection when recalled and assigned in accordance with Rules 12 and 20 of the Master Agreement.

F. REQUIRED EXERCISE OF SENIORITY (Appendix, Exhibit 2, Article V, Sections 1(c)(1) and (3))

The Carrier proposes contract language which would provide that protection under Article V would cease if an employee failed to secure a position available to him in the exercise of seniority pursuant to the rules of the applicable Rules Agreement. When a position available to an employee in the exercise of seniority would require a change of residence, the Carrier proposal would provide protection against moving and real estate costs involved.

It is the position of BRAC that protection under Article V should not cease if an employee in the exercise of his seniority rights is unable to obtain a position within 30 miles of his prior point of employment.

In considering this issue, the Board has once again found it helpful and instructive to analyze the agreements which BRAC has been able to negotiate with other carriers. In the vast majority of

those agreements, including merger-related protective agreements, employees are required to exercise their seniority rights in their district or districts in order to remain eligible for protective benefits. The Board concurs with the basic proposition that an exercise of seniority should be required to secure an available position even when a change of residence might be required rather than have a protected employee sitting at home in contented idleness and drawing full benefits while the Carrier incurs double indemnity liability by paying a new-hire or unprotected employee to fill the available job.

While the Board concurs that an exercise of seniority to any available position within the seniority district or districts should be required prior to allowing a protected employee to go on furlough and collect a full protective allowance, nevertheless it does not appear equitable or practical to require the protected employee to exercise seniority to obtain an available position which would require a change of residence merely to obtain a higher paying position if he could still hold a lower paying job within 30 miles of his point of employment. Similarly an employee should not be required to exercise seniority to obtain an available position which would require a change of residence if the move would result in some other junior protected employee winding up on furlough.

The Board also feels that moves requiring a change of residence should not be required of an employee more than once every three years.

Limitations on the requirement of the exercise of seniority similar to those discussed above are not uncommon in BRAC agreements with other carriers. The Board recommends that the parties resolve this issue in accordance with the foregoing guidelines.

G. BONA FIDE WORK (Appendix, Exhibit 2, Article VI, Section 4)

The Carrier states it should have the right to use any furloughed protected employee for temporary work within his seniority district that is within 30 miles of his employment when he was furloughed. This right includes the use of the employee for a temporary vacancy or to augment the regular force on a temporary basis, namely, either for extra or relief work.

The Carrier contends that the Organization's interpretation of "bona fide vacancy", i.e., requiring the hiring of a new employee, is too restrictive. The Carrier adds that since it is paying the furloughed protected employee a guarantee, it should be able to use him for necessary service

whether it is to fill a vacancy or to augment forces. It further adds that it currently has this right under the Master Agreement.

The Carrier asserts it has no intention of emulating any of the examples set forth in the Organization's "array of horribles". It has no intention to abuse or misuse any furloughed employee, but it does want to be able to use them for extra or relief work, including the right to use a furloughed protected man to work an unassigned day of a regular assignment when service requirements demand it, and there is no regular relief assigned thereto. It maintains it presently has this right under the Master Agreement.

The Organization states it is troubled about the use of the word "work" because it may subject furloughed employees to abuse. The Organization cited examples of other carriers creating "dummy" or fictitious jobs which it had no intention of filling, but rather using them as a basis for cancelling an employee's protection in the event the protected employee failed to apply for these fictitious jobs. The "dummy" jobs were usually located at considerable distances from the work location of the furloughed employee and frequently were jobs not compatible with the skill and physical abilities of the furloughed employee.

The Organization also protests the assignment of a furloughed employee to a job within the thirty-mile distance which job was demeaning and incompatible with the regular and usual work performed by the furloughed employee.

The Organization stresses that it suggests "bona fide vacancies" be substituted for "work" to assure that the Carrier will use a furloughed employee to fill vacancies for which the Carrier would normally hire a new employee, when the Carrier requires a furloughed employee to go to a distant location.

The Board recommends that the term "work" be broadened to read "bona fide work" which includes both temporary and relief work of at least eight hours' duration and which fills the Carrier's legitimate service needs and which is not being used to harass a furloughed employee into forfeiting his protected status. The Board recommends that "bona fide work" be applied without regard to whether the furloughed employee is called to fill a position within or further than 30 miles.

H. RIGHTS OF OTHER EMPLOYEES UPON RECALL OF FURLOUGHED PROTECTED EMPLOYEES (Appendix, Exhibit 2, Article VI, Section 7)

The Carrier seeks to require any protected furloughed employee to return to its service for reasonably comparable employment for which he or she is physically and mentally qualified at the point from which he or she was furloughed within 30 miles therefrom, to perform extra or relief work without having to assume any liability to other employees. While the Carrier believes that it should be permitted to utilize protected furloughed employees, it is amenable, in order to allay the Organization's concerns, to agree to a restriction on this right to the effect that there will be no infringement on the rights of other employees to work during their normal work day or to perform overtime work less than eight hours which was continuous with their regular assignment.

The Organization seeks contractual assurance that the recall of a protected furloughed employee will not infringe upon the rights of other employees to the extent that the other employees will not be denied the right to work on the regular off days of their assignment, or to work the overtime accruing to their assignment.

The Board recommends that this proposal be withdrawn in view of the Carrier's offer and since the rights which the Organization seeks to protect are already covered by the current Master Agreement.

I. TRANSFER OF FURLOUGHED EMPLOYEES TO OTHER SENIORITY DISTRICTS (Appendix, Exhibit 2, Article XIII)

Article XIII of Exhibit 2 covers the right of the Carrier to transfer surplus protected employees from one seniority district to another. The parties are in basic agreement with respect to all aspects of BRAC's proposal on such transfers except Section 4 which considers the relationship between seniority and involuntary transfer from one seniority district to another.

The proposal contained in Section 4 in its current form raises a fundamental issue between the parties. It is whether inverse seniority should apply when the Carrier desires to move qualified furloughed protected employees from one seniority district to another and a change of residence is required. Here the Carrier wishes to retain the right to move the employees on the basis of ability

and experience, and the Organization insists that this should be done in inverse seniority order when employees are qualified.

The Organization's position is that there is a presumption of undesirability of such a forced transfer and so the inverse order of seniority should be used in forcing qualified employees to make such a transfer or to exercise the other two options which cut off protection or sever the employment relationship. It is a common principle in protection agreements that recall of furloughed protected employees is in inverse seniority order starting with the junior qualified furloughed employee. The Board believes this principle should apply when the Carrier forces an involuntary transfer of surplus qualified furloughed protected employees from one seniority district to another when the transfer necessitates a change of residence.

There is also a matter of form under Section 2 of BRAC's proposal. Section 2 lists two alternatives which furloughed protected employees may elect when the Carrier desires to move them to another seniority district and a change of residence is involved. The first of these is voluntary furloughing without protection, and the other is to sever the employment relationship with payment of a separation allowance. The Carrier properly points out that since alternatives are being listed, the basic alternative presented by the whole of Article XIII also ought to be listed in Section 2, as the first alternative. This is the alternative of the employee accepting the change of residence transfer to another seniority district with established seniority being transferred with the employee.

The Board recommends that in selecting a furloughed protected employee for an involuntary change of residence transfer to another seniority district, the vacancy should first be offered the junior qualified furloughed protected employee. If such employee elects one of the options other than acceptance of the transfer, additional offers should be made to other qualified furloughed protected employees in inverse order of seniority.

The Board also recommends that the alternative of accepting the transfer be listed in Section 2 as an alternative presented by Article XIII of Exhibit 2.

VI. ENTERING RATES OF PAY

In its latest proposal BRAC requests that employees entering the service of the Carrier on positions subject to the April 1, 1973 Master Agreement be compensated at 90% of the rate of the

positions worked during their first year of employment and 95% of the rate of the positions worked during their second year of employment and 100% of the rate of the positions worked thereafter.

Although the Carrier has not formally agreed to these entry rates, it has raised no serious objection thereto, and the Board recommends that the rates proposed by BRAC be accepted.

VII. SUPERSEDING CLAUSE (Appendix, Exhibit 2, Article XVI)

As a final provision of the Agreement BRAC proposes the following:

"In the event of any conflict between the provisions of this Agreement and the provisions of the Master Agreement of April 1, 1973, as amended, the applicable provisions of this Agreement shall govern."

The Board feels that the proposed clause reflects the normal legal rule of contract interpretation and can see no compelling reason why it should not be accepted. The Board recommends that the Article XVI be adopted.

VIII. AMNESTY

The Board recommends that the Carrier institute no disciplinary proceedings against any BRAC represented employee, or cause to be instituted any civil or criminal action against such employees for action or non-action during the strike, except where said employees caused substantial injury and damage to persons or porperty.

The Board further recommends that the Organization not invoke its internal procedures to discipline, or in any way recriminate against any of its members for their actions or non-actions during the strike.

IX. MORATORIUM

The Carrier seeks a moratorium on all matters involved in the BRAC Section 6 notices of October 27, 1976, and October 12, 1977, and the Carrier's own counterproposals of April 12, 1978. After full consideration, the Board recommends that the parties adopt the following moratorium proposal:

The Agreements entered into by the parties represent the full and final settlement and the Section 6 notices served on Carrier by BRAC on or about October 27, 1976, and October 12, 1977,

and the Carrier's counterproposal (Section 6) served on BRAC on or about April 12, 1978 except as follows:

1. Matters other than those pertaining to Scope, Protection, and Job Conversion may be pursued under the procedures of the Railway Labor Act through peaceful handling and no further.
2. Insofar as these notices may involve matters now being negotiated in National handling, the results of the National negotiations will be binding on these parties.

No party to this Agreement shall serve, prior to January 1, 1982, (not to become effective before January 1, 1983) a notice covering or related to any subject matter contained in the aforesaid proposals of October 27, 1976, October 12, 1977, and/or April 12, 1978, and/or Article III of the July 23, 1975 Mediation Agreement (Case No. A-9696).

Respectfully submitted,

Paul D. Hanlon
Chairman

Jacob Seidenberg
Member

Jerre S. Williams
Member

Washington, D.C.

December 15, 1978

MEMORANDUM AGREEMENT

Section 1. The Agreements described below and appended hereto marked as:

EXHIBIT 1 – Revised Scope Rule Including Supplemental Agreement "A";

EXHIBIT 2 – Stabilization; and

EXHIBIT 3 – Entry Rates

represent the full and final settlement of the Section 6 Notices served on Carrier by BRAC on or about October 27, 1976, and October 12, 1977, and the Carrier's counterproposal (Section 6) served on BRAC on or about April 12, 1978, which are withdrawn in their entirety.

Section 2. No party to this Agreement shall serve, prior to January 1, 1982, (not to become effective before January 1, 1983) a notice covering or related to any subject matter contained in the aforesaid proposals of October 27, 1976, October 12, 1977, and/or April 12, 1978, and/or Article III of the July 23, 1975 Mediation Agreement (Case No. A-9696).

Section 3. All disputes arising from or related to the notice of October 27, 1976, and arising out of or related to BRAC's strike against Carrier which was commenced July 10, 1978, are now moot because of the understandings achieved in the exhibits appended hereto. Accordingly, as a part of the consideration hereof, both Carrier and BRAC hereby: (1) release and discharge each other from any and all claims and counterclaims arising from or growing out of any such disputes; and (2) agree to take all actions and steps within their power necessary or appropriate to effectuate the prompt termination and dismissal, with prejudice, of all pending suits and counterclaims for damages, declaratory orders and/or injunctive relief which have arisen from or which have grown out of any such disputes.

Section 4. There will be no disciplinary investigations, grievances, reprimands or any assesment of fines or penalties by either party against any employee represented by BRAC because of any action or non-action during or arising from the strike, excluding, however, disciplinary actions taken as a result of violence or threats of violence.

SIGNED IN , THIS DAY OF , 1978.

FOR BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS AND STATION EMPLOYEES:

International President

FOR NORFOLK AND WESTERN RAILWAY COMPANY:

Vice President-Administration

MEMORANDUM AGREEMENT

This Memorandum Agreement entered into as of this day of 1978, by and between Norfolk and Western Railway Company ("Carrier") and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes ("BRAC"). Effective , Rule 1 – Scope of the April 1, 1973 Master Agreement between the Carrier and BRAC is revised as follows:

RULE 1 - SCOPE

(a) These rules shall govern the hours of service and working conditions of employes engaged in the work of the craft or class of clerical, office, station, tower and telegraph service and storehouse employes as such craft or class is or may be defined by the National Mediation Board.

Positions or work within the scope of this Rule 1 belong to the employes covered thereby and nothing in this Agreement shall be construed to permit the removal of such positions or work from the application of these rules, subject to the exceptions hereinafter set forth and except in the manner provided in Rule 70.

When and where machines are used for the purpose of performing work coming within the scope of this Agreement, not previously handled by machines, such work will be assigned to employes covered by this Agreement. A change in the equipment used for the performance of such work will not remove such work from the coverage of this Agreement.

POSITIONS AND WORK INCLUDED

Agents and Assistant Agents, Agent-Operators, Mobile Agents, Ticket Agents and Assistant Ticket Agents, Manager Relay Offices (except Manager "GM" Office, Roanoke, Virginia) and Assistant Manager Relay Offices, Wire Chiefs and Assistant Wire Chiefs, Telephone (PBX) Operators, Telegraphers, Towermen, Levermen, Drawbridge Tender Operators (except those represented by the Brotherhood of Maintenance of Way Employes), Tower Directors, Block Operators, Report Operators, Bridge Levermen, Car Distributors, Print Operators. Train Dispatchers on the Eastern Region (except those represented by the American Train Dispatchers Association).

Clerks, Ticket Sellers, Yard Clerks, Yard Checkers, Chief Callers, Clerk-Callers, Baggage Room and Assistant Baggage Room Foremen, Warehouse and Assistant Warehouse Foremen, Transfer Foremen, and Assistant Transfer Foremen, Ice House and Assistant Ice House Foremen and Deck Foremen and the work of writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work, including those who operate office or station mechanical equipment requiring special skill and training, such as typewriters, calculating machines, bookkeeping machines, dictaphones, keypunch machines, electronic or electrically operated data processing machines and other similar equipment.

Positions engaged in assorting tickets, waybills, etc., operating office or station appliances or devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders and work of a like nature. Crew Callers, Office Boys, Messengers and positions gathering or delivering mail and other similar work.

Stockkeepers and Stockkeeper Helpers, Storehouse and Oil House Attendants and Shippers.

Laborers in and around stations, warehouses, storehouses and grain elevator, Watchmen (except shop and M.W. Department Watchmen and those with police authority), Janitors, Porters, Elevator Operators, Cleaners, Mail, Baggage and Parcel Room Employees, Cabin Car Supplymen, other similar work and positions listed in Supplemental Agreement "A".

EXCEPTIONS

(b) For the purpose of providing for exceptions from the application of some or all of the provisions of this Agreement, the Parties have entered into a Supplemental Agreement dated and designated "Supplemental Agreement 'A'," which Supplemental Agreement sets forth certain positions and employes covered by the scope of this Agreement "A"), which shall not be subject to some or all of the provisions of this Agreement and designates the provisions

to which they shall not be subject. Said Supplemental Agreement shall be, and is hereby, adopted in full and made a part of this Agreement with the same force and effect as though it were fully set forth herein.

In excepting certain positions and employes as designated in Supplemental Agreement "A", it is the intention of the Parties that seniority shall not govern the filling of such positions but that the Management shall have the right to select persons whom, in its own judgment, it considers best qualified to fill such positions.

(c) Those of the positions listed in this Addendum No. 1 which are or are later determined to be within the clerical class and craft are excluded from the application of this agreement.

(d) An officer or employee not covered by this Rule 1 may perform work covered by this Agreement which is incident to his regular duties.

NORFOLK AND WESTERN RAILWAY COMPANY

SUPPLEMENTAL AGREEMENT "A"

Entered into by and Between the

Norfolk and Western Railway Company

and

The Craft and Class of Clerks and Other Office, Station, Storehouse, Tower and Communication Service Employes of the

Norfolk and Western Railway Company

Designated Herein

Represented by

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

Effective

This is a Supplemental Agreement by and between the Norfolk and Western Railway Company, on the one hand, and its employes of the classifications set forth in the Agreement effective April 1, 1973, and designated "Master Agreement entered into by and between the Norfolk and Western Railway Company ("Company") and All the Craft or Class of Clerks and Other Office, Station, Storehouse, Tower and Communication Service Employes of the Norfolk and Western Railway Company designated herein represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes" (hereinafter referred to as the Master Agreement), as represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes ("Union") on the other hand. This Supplemental Agreement has for its purpose the designation of certain positions and employes covered by the Scope of the Master Agreement (except as provided in Section 1 of this Supplemental Agreement) which shall not be subject to some or all of the provisions of the aforesaid Master Agreement and the designation of the provisions of the said Master Agreement to which they shall not be subject. This is the Supplemental Agreement "A" referred to under the term "Exceptions" in the Master Agreement.

This Supplemental Agreement is intended to be, and is, made a part of the said Master Agreement with the same force and effect as though it were fully set forth therin.

It is understood and agreed as follows:

Section 1. The Master Agreement shall not apply to laborers on coal and ore docks; laborers on elevators (except at Lamberts Point), piers, wharves or other facilities not a part of regular forces; laborers on coal piers at Lamberts Point except as provided for in Memorandum Agreement dated February 12, 1959; laborers at Material Yard at Roanoke, nor to individuals paid for special service which only takes a portion of their time from outside employment or business, or to individuals performing personal service not a part of the duty of the Railway.

Section 2. When making appointments to excepted positions, consideration shall be given employes to whom the Scope Rule of the Master Agreement is applicable.

Section 3. (a) The rules of the Master Agreement, except Rules 1, 3, 26 and 27 are not applicable to any positions or employes in the offices or departments designated below, and the employes appointed thereto. The Union Shop Agreement (excluding Section 2) is applicable to employees designated in this Section 3(a):

(A list of departments and positions, which is omitted, follows.)

(b) The positions set forth in Attachments A and B hereof, as well as the employes appointed thereto, are subject to the Master Agreement but only Rules 1, 3, 26 and 27 of the Master Agreement will be applied to such positions and employes. However, when an incumbent holding any of the positions set forth in Attachment A hereof vacates that position, if continued by the Company, the position will no longer be covered under this Section 3(b), but will then be

covered by all the rules of the Master Agreement. Any position shown on Attachment A, permanently vacated for any reason, will be treated as a new position and the rate of pay will be adjusted in accordance with Rule 50(a) of the April 1, 1973 Master Agreement. The Union Shop Agreement (excluding Section 2) is applicable to employes designated in this Section 3(b). Any employe occupying a position covered by Section 3 or Section 4 of this Supplemental Agreement "A" may elect in writing non-membership in BRAC and such employe will thereafter be and remain in that status and fully satisfy the requirements of Rule 26 of the Master Agreement as long as he pay to BRAC amounts equal to the periodic dues and assessments (not including fines and penalties) uniformly required of all members of BRAC within the time limits provided for in the Union Shop Agreement.

Section 4. The rules of the Master Agreement, excepting Rules 1, 3 and 26, are not applicable to the positions set forth in Section 4(b) of the parties' Supplemental Agreement "A", effective April 1, 1973, as amended, nor to the employes appointed thereto, so long as any such position is held by any of the employes holding any of them on April 1, 1973. Any such position, if continued by the Company, which is not filled by the appointment of any employe specified above in this Section 4 will be removed from coverage under this Section 4 and established under the coverage of Section 5 hereof. The Union Shop Agreement (excluding Section 2) is applicable to employes appointed to positions covered by this Section 4.

Section 5. Only Rules 1, 26(a), 26(b), 56, 57 and 58 of the Master Agreement are applicable to the positions set forth in Section 5 of the parties' Supplemental Agreement "A", effective April 1, 1973, as amended, and to those that may be transferred pursuant to Section 4 above, and to the employes now or hereafter appointed thereto. The Union Shop Agreement (excluding Section 2) is applicable to employes appointed to positions now or hereafter covered by this Section 5.

Section 6. Rules 5, 12, 17(c), 20, 21, 23, 27, 28, 42, 43 and 45 of the Master Agreement are not applicable to the positions set forth in Section 6 of the parties' Supplemental Agreement "A",

effective April 1, 1973, as amended, and to those positions that may be established under this Section 6, nor to the employes now or hereafter appointed thereto. The Union Shop Agreement (excluding Section 2) is applicable to employes appointed to positions now or hereafter covered by this Section 6.

Section 7. Employes who are now or may hereafter be appointed to positions covered by Sections 4, 5 and 6 hereinabove may make application for bulletined new positions or vacancies as provided for in Rule 12 and their assignment thereto will be subject to Rule 5.

Section 8. The purpose of this section is the conversion of certain partially excepted positions listed in Supplemental Agreement "A" bearing the effective date of April 1, 1973, as amended, to full coverage ("Schedule") under rules of the Master Agreement bearing the effective date of April 1, 1973, as amended, in the manner hereafter set forth in final disposition of ARTICLE III - SCOPE of the July 23, 1975 National Mediation Agreement (Case No. A-9696).

On the effective date of this Agreement, the Company will provide a list, to be known as Attachment "C", or Section 4(b), 5 and 6 positions which will be converted to "rank and file" status, pursuant to the following principles:

(a) Positions so converted by this section will be subject to all the rules of the Master Agreement effective April 1, 1973;

(b) Present occupants of positions converted shall remain undisturbed, and no employe shall be entitled to displace other employes as a result of this conversion; however, employes shall thereafter be entitled to place themselves in accordance with the provisions of the April 1, 1973 Master Agreement;

(c) Rates of pay of converted positions will be adjusted in accordance with Rule 50(a) of the Master Agreement.

Section 9. (a) Except as provided for in Section 4 hereinabove and paragraphs (b) and (c) of this Section 9, additional positions may be added to those covered by Sections 4, 5 and 6 hereinabove only by written agreement between the Company and the General Chairman.

(b) The Carrier may establish a total of 10 Section 5 or Section 6 partially excepted positions or any combination thereof in each calendar year beginning with the year 1979. When such positions are established, the Carrier will notify BRAC.

(c) A Section 4(b) position that is discontinued on or after the effective date of this Agreement may be reestablished as a Section 5 position within 12 months of the date of discontinuance without affecting the number of additional positions referred to in paragraph (b) of this Section 9. Also, a Section 5 or Section 6 position that is discontinued on or after the effective date of this Agreement may be reestablished within 12 months of the date of discontinuance without affecting the number of additional positions referred to in paragraph (b) of this Section 9.

Section 10. Employes appointed to official, subordinate official and excepted positions, if they acquire seniority under the Master Agreement, will be included on the appropriate seniority roster(s) and designated "Official or Excepted."

Section 11. The seniority date for employes holding any position covered by Section 3 hereinabove shall be the later of his date of hire in any such position or April 1, 1973. Any employe holding a position within the coverage of Section 3 hereinabove will have the option of non-membership in the Union, to be exercised by written notification thereof to BRAC and NW, and such employe will thereafter be and remain in that status and fully satisfy the requirements of the Union Shop Agreement as long as he pays to the Union amounts equal to the periodic dues and assessments (not including fines and penalties) uniformly required of all members of the Union, within the time limits provided for in the Union Shop Agreement.

Section 12. As of the effective date hereof, this Supplemental Agreement "A" will supersede the Supplemental Agreement "A" of April 1, 1973, as amended.

IN WITNESS WHEREOF, the Union and the Company have executed this Supplemental Agreement "A" this day of , 1978.

The following positions, when vacated by the present incumbents, will be placed under the coverage of all rules of the Master Agreement.

(A list of departments and positions, which is omitted, follows.)

EXHIBIT 1
(NW 9-21-78)

On the effective date of this agreement the following positions will be placed under Rules 1, 3, 26, and 27.

(A list of departments and positions, which is omitted, follows.)

MEMORANDUM AGREEMENT

This Memorandum Agreement entered into as of this day of 1978, by and between Norfolk and Western Railway Company ("Carrier") and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes ("BRAC").

ARTICLE I

Section 1. The purpose of this Agreement is to provide protection for employes affected by the permanent abolishment of position(s) subject to the conditions hereinafter set forth.

Employes protected under this Agreement affected by the permanent abolishment of a position subject to this Agreement will be notified in writing by the Carrier at the time affected of the options available with respect to the protective benefits of this Agreement or the protective benefits of some other protective agreement, if applicable, and such employes will have fifteen (15) days thereafter to signify in writing which agreement will apply.

Nothing in this Agreement shall be construed as depriving employes eligible for benefits hereunder of benefits provided under any other protective agreement; however, there will be no duplication or pyramiding of benefits between this and other agreements.

ARTICLE II

Section 1. The term "permanent abolishment (elimination-discontinuance) of a position" as used herein shall mean the abolishment, elimination or discontinuance of a position coming under the BRAC Agreement, except as follows:

(a) The abolishment, elimination or discontinuance of a position established for special projects such as, but not limited to railroad, industry or government projects, which abolishment is during or at the end of the period for which established or within sixty (60) days thereafter;

(b) The temporary discontinuance of positions under the provisions of Article VII of the February 25, 1971 Mediation Agreement provided said positions are reestablished at the termination of the emergency except as otherwise provided in Article VIII of this Agreement;

(c) The abolishment, elimination or discontinuance of a position and the simultaneous establishment of another position at the same location (city, town, or terminal) in the same seniority district, or changes in regular relief assignments;

(d) The abolishment, elimination or discontinuance of position vacant because of no permanent incumbent;

(e) The abolishment, elimination or discontinuance of position(s) established for a period of less than six (6) months; provided such position(s) is not reestablished within 12 months of date abolished;

(f) The reduction of the number of employes on an extra board as provided for in Rule 13 of the Master Agreement; however, this exception does not apply to the permanent abolishment of an established position temporarily occupied by an extra board employe;

(g) Positions abolished as a result of a decline in business as provided in ARTICLE VII of this Agreement; or

(h) The abolishment, elimination or discontinuance of a position(s) at the Coal Piers, Lamberts Point, Norfolk Terminal, Norfolk, VA, account fluctuations in coal dumpings.

Section 2. The words "protective period" as used in this Agreement mean a period not to exceed five (5) years from the date of the permanent abolishment defined in Section 1 of this ARTICLE II or the date a protected employe is displaced as a result thereof.

Section 3. A "change in residence" as used in this Agreement shall only be considered "required" if the reporting point of the affected employe is more than 30 normal route miles from his point of employment at the time affected.

ARTICLE III

Section 1. In any case where the Carrier decides to permanently abolish a position, it shall give at least 30 days advance notice of such intended abolishment by posting a notice on bulletin boards convenient to the employes of the Carrier immediately affected and by sending notice to the General Chairman representing such employes. Such notice shall contain a full and adequate statement of the changes to be effected.

NOTE: In the event a regular position occupied by a unprotected employe is abolished only 5 days advance notice is required.

Section 2. During such period, the Carrier's representative will be available for conference with the General Chairman to discuss any facts or representations that the General Chairman may see fit to submit as to the wisdom and necessity of such change, and to discuss any questions as to the manner in which or extent to which employes represented by the organization may be affected by such change with a view to avoiding grievances and minimizing adverse effects upon employes involved. There shall not be any question as to the right of the Carrier to make such change.

The notice requirements of this ARTICLE III apply only in case of permanent abolishment of a position as that term is defined in Section 1, ARTICLE II, hereof. If at the time the Carrier serves notice on the organization of intended abolishment of a position or subsequent thereto during the notice period the position is or becomes vacant, such position may be abolished immediately.

In cases in which, after notice to the General Chairman of the organization and, if requested, conferences between the parties as provided in this Section 2, the parties are in disagreement, the Carrier may nevertheless make such change, subject to compliance with the other provisions of this Agreement. In the case of the abolishment of positions subject to regulatory approval, the organization is not hereby precluded from opposing any such proceedings on its merits.

Section 3. In the event notice has been given of desire to permanently abolish a position and such position is not abolished within 120 days after date of notice, the notice will be void and a new notice will not be served for the same position during the next 120 days.

ARTICLE IV

Employes shall qualify as Protected Employes under this Agreement in accordance with the following:

(1) All employes regularly assigned and having 5 or more years seniority on the effective date of this Agreement in a seniority district as defined in Rule 2, as amended, of the April 1, 1973 Master Agreement;

(2) All employes regularly assigned on the effective date of this Agreement and having less than 5 years seniority in a seniority district as defined in Rule 2, as amended, of the April 1, 1973 Master Agreement, upon acquiring 5 years of such seniority, unless furloughed upon attaining said 5 years seniority, in which event they will be eligible for such protection when recalled and assigned under Rules 12 and 20 of the Master Agreement.

(3) All employes in a furlough status as of the effective date of this Agreement who have 5 or more years seniority in a seniority district as defined in Rule 2, as amended, of the April 1, 1973 Master Agreement when recalled and assigned under Rules 12 and 20 of the Master Agreement;

(4) All employes in a furlough status on the effective date of this Agreement having less than 5 years seniority in a seniority district as defined in Rule 2, as amended, of the April 1, 1973 Master Agreement upon attaining such 5 years seniority and when recalled and assigned under Rules 12 and 20 of the Master Agreement;

(5) All employes hired subsequent to the effective date of this Agreement upon acquiring 5 years seniority in a seniority district as defined in Rule 2, as amended, of the April 1, 1973 Master Agreement, unless furloughed upon attaining such 5 years seniority, in which event they will be eligible for such protection when recalled and assigned under Rules 12 and 20 of the Master Agreement.

ARTICLE V

Section 1. No Protected Employe of the Carrier covered by this Agreement who is continued in service after having been adversely affected by force reduction resulting from the permanent abolishment of a position as defined in Section 1, ARTICLE II, of this Agreement shall, for a period not exceeding five (5) years following the date affected, be placed in a worse position with respect to compensation than the normal rate of compensation for his regular assigned position on the date affected, adjusted to include subsequent general wage adjustments (including cost-of-living adjustments) subject, however, to the following terms, conditions and limitations:

(a) If an affected employe fails to exercise his seniority rights to secure another available position which does not require a change in residence to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated for the purpose of this Agreement as occupying the position which he elects to decline.

(b) An employe shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, discipline, leave of absence, military service, or other absence from the Carrier's service, (exclusive of vacation or jury duty absences) or during any period in which he occupies a position not subject to the working agreement; nor shall he be entitled to the benefits of this Article during any period when furloughed.

(c) Protection provided under this Article shall cease upon: (1) such protected employe failing to secure a position available to him in the exercise of seniority pursuant to the rules of the applicable rules agreement; (2) upon such protected employe's resignation, death, retirement, dismissal for justifiable cause; or (3) upon such protected employe's forfeiture of all seniority pursuant to the rules of the applicable rules agreement.

(d) The protective allowance afforded under this Article shall be reduced by an amount equal to the difference in rate of pay of position(s) from which displaced and the rate of pay of the position(s) acquired as a result of a temporary force reduction under conditions set forth in ARTICLE VIII, February 25, 1971 Mediation Agreement (Case No. A-8853).

Section 2. The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employe entitled to such an allowance is hereinafter referred to as a "displaced" employe.

Section 3. Employes whose positions are abolished as set forth in Section 1, ARTICLE II, hereof, or those affected by the exercise of displacement rights as a result thereof shall not be

placed in a worse position with respect to compensation than the straight time rate of the last position occupied prior to being affected provided, however, that in addition thereto such compensation shall be adjusted to include subsequent general wage adjustments (including cost-of-living adjustments).

In the application of the above paragraph, an hourly rated employe will be guaranteed his hourly rate, a daily rated employe will be guaranteed his daily rate and a monthly rated employe will be guaranteed his monthly rate. For employes displaced from or exercising seniority to relief positions, the guarantee shall be computed on the basis of the average daily rate of the positions relieved. In any month in which such employe earns less than his guarantee, unless absent from duty, he will be paid the difference. Hours in excess of eight worked on any day for hourly and daily rated guaranteed employes shall be paid in addition to the guarantee at the applicable overtime rates. For monthly rated guaranteed agents, hours worked in any week in excess of forty-eight (48) hours on the six days of a work week shall be paid for in addition to the guarantee at overtime rate, where applicable.

Section 4. The displacement allowance shall be paid to the regularly assigned incumbent of the position permanently abolished as defined in Section 1, ARTICLE II, hereof. If the position of an employe is abolished while he is absent from service, he will be entitled to the displacement allowance when he returns to service. The employe temporarily filling said position at the time it was abolished will be given a displacement allowance on the basis of said position until the regular employe returns to service and thereafter shall revert to his previous status and will be given a displacement allowance accordingly, if any is due.

ARTICLE VI

Section 1. Any Protected Employe of the Carrier covered by this Agreement who is deprived of employment as a result of force reduction resulting from the permanent abolishment of a position as defined in Section 1, ARTICLE II, hereof shall be accorded an allowance (hereinafter termed furlough allowance) based on the hourly, daily, or monthly rate of the position occupied at

time affected, adjusted to include subsequent general wage adjustments (including cost-of-living adjustments).

The furlough allowance of hourly or daily rated employes will be computed on the basis of 176 hours per month. This furlough allowance will be payable for a period equivalent to the length of service of the employe involved, with a maximum period of five years, except as otherwise provided herein.

Section 2. For the purposes of this Agreement, the length of service of the Protected Employe shall be determined on the basis of his earliest seniority date on a seniority district set forth in Rule 2, as amended, of the Master Agreement on the date affected. He shall be given credit for one month's service for each month in which he performed any service and twelve such months shall be credited as one year's service. The employment status of a Protected Employe shall not be interrupted by furlough in instances where such employe has a right to and does return to service when called. In determining length of service of an employe acting as an officer or other official representative of an employe organization, he will be given credit for performing service while so engaged on leave of absence from the service of the Carrier.

Section 3. A Protected Employe affected by a permanent abolishment of a position as defined in Section 1, ARTICLE II, hereof shall be regarded as deprived of his employment and entitled to a furlough allowance in the following cases:

(a) When as a result of said permanent abolishment of his position he is unable to obtain, by the exercise of his seniority rights, a position in any district in which he holds seniority;

(b) When the position he holds is not abolished but he loses his position as a result of the exercise of seniority rights by another employe as a result of said permanent abolishment or by other employes brought about as a proximate consequence of such permanent abolishment of a position, and if he is unable, by the exercise of his seniority rights, to secure a position in any district in which he holds seniority.

Section 4. A Protected Employe shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with

the current rules and practices applicable to employes generally, dismissal for justifiable cause in accordance with the rules, forfeiture of seniority, furlough due to any of the exceptions listed in ARTICLE II hereof or failure to work when called in any seniority district within thirty (30) normal route miles of his point of employment on date furloughed. Protected Employes electing to accept voluntary furlough status rather than place themselves on positions requiring a change of residence will not be subject to the protective provisions of this Article while so furloughed.

Section 5. Each employe receiving a furlough allowance shall keep the Carrier informed of his address and the name and address of any employer by whom he may be regularly employed, including the address of his place of business if self-employed.

Section 6. The furlough allowance shall be paid to the regularly assigned incumbent of the position permanently abolished as defined in Section 1, ARTICLE II, hereof. If the position of an employe is abolished while he is absent from service, he will be entitled to the furlough allowance when he returns to service. A Protected Employe temporarily filling said position at the time it was abolished will be given displacement or furlough allowance whichever is applicable, on the basis of said position until the regular employe returns to service and thereafter shall revert to his previous status and will be given a furlough allowance accordingly, if any is due.

Section 7. A Protected Employe receiving a furlough allowance shall be subject to call to return to service after being notified in accordance with the rules agreement. Further, such employe may be required to return to the service of the Carrier for other reasonably comparable employment for which he is physically and mentally qualified at the point from which furloughed or within 30 normal route miles thereof.

An employe receiving a furlough allowance under this Agreement will be required to protect all work for which qualified or retrained within the craft at any point from which furloughed or at any point in any seniority district located within 30 miles thereof.

Section 8. If an employe who is receiving a furlough allowance returns to service, the furlough allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a furlough

allowance. During the time of such reemployment, however, he shall be entitled to protection in accordance with the provisions of ARTICLE V. If an employe who had received a furlough allowance and had returned to service (other than for temporary work or vacation relief), is again affected by the permanent abolishment of a job to the extent that he is eligible for another furlough allowance, the furlough allowances will not be cumulative, i.e., each eligibility and period of furlough allowance will be figured separately and the employe affected entitled to the higher or highest of such furlough allowances, the furlough allowance not to be combined.

Section 9. Furlough allowances of Protected Employes will be reduced by the full amount of unemployment benefits received or to which entitled, compensation received from Carrier (including time claim payments, payments in lieu of vacation, sick pay, jury duty pay, etc.), compensation from any other employment and/or self-employment, and/or compensation lost account forfeiture of seniority. Time claim payments will be considered as compensation for the month in which applicable rather than the month in which allowed.

Section 10. A furlough allowance shall cease prior to the expiration of its prescribed period in the event of:

(a) Failure without good cause to return to service in accordance with rules of the Master Agreement;

(b) Resignation;

(c) Death;

(d) Retirement on pension on account of age or disability in accordance with the current rules and practices applicable to employes generally;

(e) Dismissal for justifiable cause;

(f) Forfeiture of all seniority pursuant to the rules of the applicable rules agreement; or

(g) Option for severance pay. (One exception to the first paragraph of ARTICLE X will be that an employe eligible for and receiving a furlough allowance may, within ninety (90) days from date furloughed resign and request a lump sum separation allowance. The

amount thereof shall be determined in accord with ARTICLE X, less any and all amounts received as furlough allowance.)

ARTICLE VII

Further, the protective benefits of this Agreement shall not apply in the event an employe protected under this Agreement is affected because of a decline in the Carrier's coal revenue and non-revenue ton miles in excess of 5% in any thirty day period compared with a thirty day comparable period in the year 1974, it being understood and agreed that a reduction in force in the craft represented by BRAC may be made at any time during the said thirty day period below the number of employes of carrier represented by BRAC to the extent of 1% for each 1% the said decline exceeds 5%. Upon restoration of the Carrier's business following any such force reduction, employes who are furloughed by the application of this ARTICLE VII must be recalled in accordance with the same formula within 15 calendar days.

ARTICLE VIII

If any emergency affecting employes protected under this Agreement results in loss or damage to the Carrier's facilities, Carrier will notify BRAC within 45 days of the date of commencement of the emergency whether or not it intends to restore the Carrier facilities so lost or damaged. In the event the Carrier elects not to restore the Carrier facilities so lost or damaged, the protection eligibility of the employes protected under this Agreement who are so affected by such loss or damage of Carrier facilities will resume from that day; and, if the Carrier elects to restore the facilities so lost or damaged, the protection eligibility of the employes protected under this Agreement who are so affected by such loss or damage of Carrier facilities will resume when such restoration is completed or six months after the date such loss or damage occurs, whichever occurs first.

ARTICLE IX

Protected Employes in a furlough status, except those who have elected voluntary furlough, will, during the protective period, be continued in the applicable hospital, medical and surgical insurance, health and welfare plan and dental plan, the same as employes in active service.

ARTICLE X

Section 1. Any employe of the Carrier eligible to receive a furlough allowance under ARTICLE VI hereof, may, at his option at the time first eligible for such furlough allowance, resign and (in lieu of all other benefits and protections provided in this Agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 yr. and less than 2 yrs.	3 months' pay
2 yrs. and less than 3 yrs.	6 months' pay
3 yrs. and less than 5 yrs.	9 months' pay
5 yrs. and over	12 months' pay

In the case of employes with less than one (1) year's service, five (5) days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum. Length of service shall be computed as provided in ARTICLE VI, Section 2. One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employe in the position last occupied prior to time of furlough.

Section 2. Where, as a result of the permanent abolishment of positions, there exists a surplus of Protected Employes at a point so that some Protected Employes in order to continue in service would be required to transfer to other points requiring a change of residence, then those Protected Employes at such point who are 62 years of age or over, to the extent of the number of surplus Protected Employes at such point, may elect to request that rather than remain in service they be allowed to resign and accept lump sum separation allowance. It shall be within the discretion of the Carrier in each individual case as to whether such request will or will not be honored. Where such requests are honored, the lump sum separation allowance shall be computed in accordance with the schedule set forth above, plus compensation for vacation earned and not yet taken, *Provided, However*, that in no case shall such an employe be eligible for more money in separation allowance than would have been produced by working his assigned hours (plus holiday pay, if any)

to the end of the month in which he would be required to retire to be eligible for supplemental annuity under the Railroad Retirement Act.

ARTICLE XI

An employe protected under this Agreement who is affected by the permanent abolishment of positions as defined in Section 1, ARTICLE II, hereof and who is, as a result thereof, required to change his residence in order to secure a position shall be afforded the benefits of Sections 4 and 5 of the April 7, 1965 Memorandum Agreement between the parties.

In lieu of the benefits provided for in Section 5 of the April 7, 1965 Memorandum Agreement, a Protected Employe may accept an amount equal to 10% of the fair market value of his home, in which event the Carrier shall be relieved of any obligation under said Section 5.

ARTICLE XII

In the event any dispute or controversy shall arise between the Carrier and an individual employe, or his authorized representative, as to the interpretation or application of any of the provisions (except as defined in ARTICLE XI) of this Agreement to any specific individual or individuals which cannot be settled by the parties after being handled in the usual manner up to and including appeal to the Vice President-Administration, such dispute may be submitted by either party to an Arbitration Board as hereinafter provided at any time within one year after the date of the Vice President-Administration's decision in the dispute.

Arbitration may be initiated by either party, by serving notice on the other party of the specific issue in dispute and the specific individuals involved. In such notice, the party shall designate one member of the Arbitration Board to represent such party. Within ten days after receipt of such notice, the party upon whom such notice is served shall designate a member of the Arbitration Board to represent such party. The members so designated shall be considered the party members.

Within twenty days of the date one party serves notice of arbitration upon the other party, the two party members of the Arbitration Board shall meet and attempt to agree upon a third, or

neutral, member of such Board. If agreement can be so reached and the party agreed upon will serve, the Arbitration Board shall be thus established.

In the event the party upon whom notice of arbitration is served fails within ten days to select an arbitrator to represent him, the Vice President-Administration (in the case of Carrier's failure to act) or the General Chairman of BRAC (in the case of inaction of the employe or his authorized representative) shall be deemed to be the second party member of the Arbitration Board. In the event the party members fail to agree upon the third or neutral member of the Arbitration Board within twenty days of the date one party serves notice of arbitration, the party serving such notice may at any time thereafter request the National Mediation Board to appoint the third or neutral member of such Board, and when the neutral member is so appointed, the Arbitration Board shall be thus established.

The neutral member agreed upon by the party members, or appointed by the National Mediation Board, shall have the same authority as the party members.

The Arbitration Board shall meet within thirty days after being established, and shall proceed to investigate such dispute and render its award, which shall be final and binding on the parties. In the case of failure or refusal of either party member to act, the other two members of such Board shall be competent to so meet and render an award.

The jurisdiction of the Arbitration Board shall be limited to deciding the specific issues submitted to it and the Board shall not have authority to change or modify any provisions of this Agreement. All cost and expenses of the Arbitration Board, except salaries and expenses of the party members, not assumed by the National Mediation Board, shall be assumed equally by the parties.

ARTICLE XIII

Section 1. In any case where there exists a surplus of furloughed protected employees on any seniority district and the Carrier desires to transfer such surplus furloughed protected employes to a different seniority district, the Carrier shall furnish the General Chairman the following notice of any such proposed transfer:

(a) 30 days notice where not more than five employes are to be transferred when a change in residence is not required.

(b) 60 days notice where more than five employes are to be transferred when a change in residence is not required.

(c) 90 days notice when such transfer requires a change in residence.

Such notice shall contain a full and adequate statement of the proposed change or changes, including an estimate of the number of employes to be transferred.

Section 2. A furloughed protected employe effected by a notice that the Carrier desires to transfer him to a different seniority district shall, if the transfer involves a change in residence, be entitled to the following options:

(a) Voluntarily furloughing himself at his home location and have his monthly displacement allowance suspended during the period of voluntary furlough; or

(b) Be severed from employment upon payment to him of a separation allowance computed as provided in Article X.

Section 3. Employes transferring to a new point of employment requiring a change of residence shall be entitled to the benefits contained in Article XI.

Section 4. The total number of furloughed protected employes proposed to be transferred to a different seniority district shall not exceed the number of bona fide permanent vacancies available to such employes at the time of transfer. A bona fide vacancy is a vacancy which, in the absence of a transfer of a furloughed protected employe, would require the Carrier to employ a new employe. Transfers to vacancies requiring a change in residence under this Article shall be subject to the following:

The vacancy shall first be offered to the junior qualified protected employe in the seniority district where the vacancy exists and such employe shall have twenty (20) days to elect one of the options set forth in Section 2 of this Article. If that employe elects not to accept the transfer, the bona fide vacancy will then be offered in inverse seniority order, to any

remaining qualified protected employe deprived of employment in the seniority district, who will each have twenty (20) days to elect one of the options set forth in Section 2 of this Article or to make the transfer.

Section 5. Employes transferred under this Article will have their established seniority transferred from the district in which furloughed to the district to which transferred.

ARTICLE XIV

A Protected Employe who performs compensated service for the Carrier will be allowed the rate of pay of the position worked or his protected rate, whichever is greater, subject to the provisions of this Agreement.

ARTICLE XV

An employe eligible for benefits under this Agreement must file a claim therefor in writing with the officer designated by the Carrier within thirty (30) days following the end of the month for which claim is filed.

ARTICLE XVI

In the event of any conflict between the provisions of this Agreement and the provisions of the Master Agreement of *April 1, 1973*, as amended, the applicable provisions of this Agreement shall govern.

EXHIBIT 3
(NW 9-21-78)

MEMORANDUM AGREEMENT

This Memorandum Agreement entered into as of this day of 1978, by and between Norfolk and Western Railway Company ("Carrier") and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes ("BRAC").

Employes entering the service of the Carrier on positions subject to the April 1, 1973 Master Agreement will be compensated at:

1. 90% of the rate of the positions worked during their first year of employment;
2. 95% of the rate of the positions worked during their second year of employment; and
3. 100% of the rate of the positions worked thereafter.

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